

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3421 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DESAIBHAI SHANABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners
MS HARSHA DEVANI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 08/12/2000

ORAL JUDGEMENT

When the matter was called out, learned advocate Mr T.J.Patel for learned advocate Mr J.M.Patel for the petitioner appeared for the petitioner while learned AGP, Ms.Harsha Devani appeared for the respondents. During the course of hearing, it was found that the right to

claim the benefit of pension pursuant to the Government resolutions dated 21.12.71 and 8.1.75 and the correspondence exchanged between the concerned school where the deceased was working as a teacher and the government offices, there is a disputed fact as to whether the option was exercised within time by the deceased or not and, if yes, whether he had refunded the amount for availing the benefit of pension, which, obviously, could not be thrashed out in a petition under Article 226 of the Constitution of India.

The deceased had joined the service in the Sanstha school on 2.8.39 as Assistant Teacher. His superannuation was due on 11.7.66. However, the petitioner was granted extension upto 16.6.71. There is, therefore, also dispute about the exact date of retirement. Whether the period during which he continued after 58 years was by way of reemployment or extension of service is unclear and disputable. The deceased-original petitioner died on 14.2.89 without any child and his wife had pre-deceased him. Therefore, the sons of his brother have been impleaded in place of the original petitioner.

The writ petition, ordinarily, is not expedient and advisable to be entertained where disputed questions of facts are involved. Since there are disputed questions involved in this petition, this Court is not inclined to entertain and exercise its discretionary, equitable, extraordinary, constitutional, plenary power under Article 226 of the Constitution. Therefore, the petition is required to be rejected on that count. However, as jointly agreed by the learned advocate for the petitioner and the learned AGP appearing for the respondents, in case a representation is made by the petitioners to the Government, the same will be considered and examined, as early as possible, and if permissible, necessary benefits could be given.

In view of the aforesaid observations, this petition is rejected. However, it is observed that in case representation is made in this behalf on or before 31st March, 2001, the same shall be examined and entertained by the respondent authority in accordance with the rules and will be expeditiously disposed of. Rule discharged with no order as to costs.

(J.N.Bhatt, J.)

(vjn)